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Supreme Court, U.S.
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JOSEPH F. SPANIO, JR.
CLERK

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

AUGUSTUS J. SIMMONS,

Petitioner,

v.

STATE OF CONNECTICUT;

~~CONNECTICUT DEPARTMENT OF TRANSPORTATION;~~

~~J. WILLIAM BURNS, COMMISSIONER,~~

~~METROPOLITAN DISTRICT COMMISSION;~~

~~JOHN J. BARTIZEK, CLERK,~~

Respondents.

**PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT
OF THE STATE OF CONNECTICUT**

AUGUSTUS J. SIMMONS
Pro Se

P. O. Address:

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22/10/88



QUESTIONS PRESENTED FOR REVIEW

1. Whether the courts below erred in disregarding the evidence of ownership against a criminal charge of interference (breach of peace) with a sewer project being installed upon private property without a right-of-way and without compensation.

2. Whether the courts below erred in not addressing the conflict as between the Metropolitan District Commission, who filed the complaint, and proceeded to install a sewer through private property, in a town beyond its jurisdiction.

3.- Whether the courts below erred in instructions to the jury that defendant had no legal right to assert ownership against the Metropolitan District Commission, where, or when the State of Connecticut, Department of Transportation, was going to be the benefactor of the project.

4. Whether the courts below erred in permitting a "trespasser" to charge an "owner" with interference of a sewer project where no physical violence was involved.

5. Whether the courts below erred in instructions to the jury concerning the defense of reasonable resistance to an unlawful entry and illegal seizure of real property.

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OPINIONS BELOW

The ruling from the Connecticut Appellate Court (13 Conn. App. 804), dated December 29, 1987 is printed at Appendix page 2a infra and is official notification to counsel of record for all purposes. The Supreme Court of the State of Connecticut upon *Order on Petition for Certification to Appeal* ruled on consideration of the petition by the defendant for certification to appeal from the Appellate Court (13 Conn. App. 804) it is hereby ordered that said petition be, and the same hereby is denied, is printed at Appendix page 4a infra and is officially reported.

JURISDICTION

The date of the denial on Petition for Certiorari by the Connecticut Supreme Court sought to be reviewed is February 2, 1988 which is also the date of its filing. The jurisdiction of this court is invoked under 28 U.S.C. § 1257(7)(8) and under Rule 17.1 of the United States Supreme Court Rules.

STATUTE AND REGULATION INVOLVED

(Set out in Appendix pages 5a, 6a, 7a)

Connecticut General Statute § 53a-181
 14th Amendment, United States Constitution
 Fifth Amendment, United States Constitution
 Article First, Section 8 of the Connecticut Constitution
 Article First, Section 11 of the Connecticut Constitution

STATEMENT OF THE CASE

Augustus J. Simmons, the petitioner herein, has for the past two and a half (2½) decades asserted his private property rights against the unconsented entry upon his land by the Connecticut Department of Transportation, the Federal Aviation Administration and the Metropolitan District Commission without statutory authority, without compensation, and in violation and non-compliance of federal and state rules, regulations, and statutes, applicable to the taking of private property for a federal project with federal funds.

What they have not accomplished through orderly eminent domain procedures as mandated by the United States Congress with the enactment of Public Law 91-646 in 1971, the Uniform Real Property Acquisition Act, they have attempted to accomplish with "police power," dominion over private property of the petitioner.

The most recent incident involves an installation of a sewer line to service the western portion of Bradley International Airport by the Metropolitan District Commission through the private lands of the petitioner under the protection of the State Attorney General's office who rely upon a fraudulent citation placed upon the land records with no due process, no compensation, no compliance with federal or state statutes or regulations, no notice to lien-holders and no inclusion of the land owner in the citation, and, the Federal Aviation Administration (F.A.A.) having placed sophisticated navigational instrumentation upon petitioner's property without acquiring an adequate property interest, without paying for the privilege, has also been a trespasser for over two (2) decades, has been in accord with the bumbling and assurances given to the federal agency by the Connecticut Department of Transportation, that, perhaps by the next century the necessary property interests will be acquired.

It is apparent and obvious the Metropolitan District Commission had no deed, no right-of-way, paid no compensation, was a trespasser with no jurisdiction in a town which was not a member of the Commission and as such had no authority to insist upon an arrest for an orderly assertion of private property rights and relied on the police power and aid of the State Police force to bypass eminent domain procedures.

The date of this particular arrest was August 28, 1985 and is only a very small part of the numerous on-going episodes involving a navigational servitude imposed upon the petitioner and the deprivation of a constitutionally protected property interest for which the petitioner is entitled to notice and a hearing under the due process clauses of the Federal and State Constitutions.

On or about February 28, 1962, the STATE OF CONNECTICUT filed a taking on the land records of the Town of East Granby, Connecticut at Volume 38, page 596. On October 25, 1967 petitioner SIMMONS prevailed in a state court action and had the taking adjudicated illegal. In 1967, petitioner began an action for ejectment, trespass, and to quiet title against the state in State Court. (This action would continue to 1977 with judgment for petitioner). On January 25, 1968, the STATE again filed a taking on the land records at Volume 46, page 113. On March 30, 1971 petitioner again prevailed in the State Court to have the second taking declared illegal, null and void.

In 1971, petitioner brought an action in Federal District Court against the state and various of its officials under the Civil Rights Act, 28 U.S.C. § 1983. In its decision of January 19, 1973, reported at *472 F.2d 509* (2nd Cir., 1973) the United States Court of Appeals for the Second Circuit, on appeal from Dismissal of The Complaint, reversed and remanded with orders to stay the action in the District Court pending resolution of the boundary dispute in State Court.

In November 1974, while petitioner continues paying taxes to the Town of East Granby, the F.A.A. demands the Connecticut Department of Transportation install a permanent security fence around the airport and a portion of petitioner's real property. In 1974, petitioner brought an action in the District Court against both the State and the F.A.A. for an injunction against federal funding. The injunction was denied on November 5, 1974, without prejudice and with the added note that "In the event that the State Court unduly delays the litigation, the plaintiff may renew his claim." Ruling on Plaintiff's Motion for a Preliminary Injunction, J. Clarie, dated November 5, 1974.

From December 1974 to the present time, petitioner removed the fence and erected no trespassing signs on at least four occasions and was arrested each time. Petitioner was tried on at least one occasion and was acquitted by a jury. In the Ejectment and Quiet Title action, a trial was had for thirty days between May 1, 1975 and April 30, 1976. On January 11, 1977, petitioner prevailed in the Quiet Title action in the lower court and was granted damages for trespass and the State was to quit the land within one hundred days. The State never formalized an appeal, gave notice on December 2, 1981 that it was withdrawing from the appeal after the federal court action was brought.

On December 13, 1977 and January 4, 1978 the State engaged petitioner into a proposed contract for the sale of real property. On April 19, 1978 petitioner withdrew from negotiations, refused to tender any deeds for reasons of fraud by attempting to date a taking back to November, 1964, by attempting to acquire the property without establishing fair market value of appraisals and unknown to petitioner until 1982 that the Connecticut Department of Transportation had engaged in a formal lease of petitioner's property to the Federal Aviation Administration, without compensation, without notice to the owner, without any notice on the land records, and, of this date the F.A.A. has not paid one cent for the trespassing and servitude upon private property.

On June 7, 1982, Assistant Attorney General Victor Feingold for the State of Connecticut, stated that the executory contract for the sale merely amounted to "a simple agreement to sell land for a price certain. Now, thereafter, no action was brought to even enforce the agreement . . . [and] the statute of limitations have passed and the State of Connecticut is barred from enforcing the agreement by specific performance." Transcript of June 7, 1982, State of Connecticut Case No. 163875, at 13-14.

On August 20, 1984 petitioner in a letter addressed to John J. Bartizek, District Clerk, Metropolitan District Commission, quoted Section 9-1 of Chapter 9, a portion of which reads as follows: "Before taking any land or private property for any of the public uses aforesaid, said Board shall agree with the owner or owners thereof as to damage done thereby or shall cause to be made a fair appraisal of such damage." The above quote is from the Ordinances for the seven (7) member towns of which East Granby is not a member, and rather than an assessment of damages, the bureaucracy resorts to an arrest for breach of peace and additional expense to the landowner to defend against false and malicious charges.

ARGUMENT

The decision of the Connecticut Supreme Court, dated February 2, 1988 denying the petition by the defendant for Certification to Appeal from the Appellate Court (13 Conn. App. 804) and the decision of the Appellate Court affirming the decision of the trial judge should be reviewed by this court to resolve an apparent conflict between the Connecticut State Court and this court regarding the rights of a private property owner against illegal, unlawful, and uncompensated entry upon real property by the Metropolitan District Commission of Hartford, Connecticut, the Connecticut Department of Transportation and the Federal Aviation Administration.

There is an apparent conflict between the Appellate Court of the State of Connecticut and this court over the seizures of property and to seizures of persons under the Fourth Amendment to the Constitution of the United States and where the gravamen of the petitioner's defense to the arrest for interference with the installation of a sewer project through private lands of the petitioner constituted a taking

of his land without statutory authority and an uncompensated taking in violation of the Fifth and Fourteenth Amendments to the United States Constitution, the State Court in its charge did not expressly indicate whether the defendant may have had a license and privilege to resist an illegal entry.

The jury should have been told unequivocally to acquit the defendant if the entry was found to have been unlawful. If justice is to be done in accordance with the rule of the law, it is of paramount importance that the court's instructions be clear, accurate, complete and comprehensible, particularly with respect to the essential elements that must be proved by the government beyond a reasonable doubt, see *Holland v. United States*, 348 U.S. 121, 138, 75 S. Ct. 127, 99 L.Ed. 150 (1954); *United States v. Lodwick*, 410 F.2d 1202, 1204 (8th Cir., 1969). Although it is within the province of the jury to draw reasonable logical inferences from the facts proven, they may not resort to speculation and conjecture, *State v. Saracino*, 178 Conn. 416, 419, 423 A.2d 102; *State v. Festo*, 181 Conn. 254, 259, 435 A.2d 38; *State v. Ballas*, 180 Conn. 662, 674, 433 A.2d 989. Proof, facts that the Metropolitan District Commission entered upon the property of petitioner LEGALLY was an essential element of the case, because it was that activity which they claimed to be performing at the time the defendant may have interfered with them. It is common experience that an owner is familiar with his own property and . . . the suppression of relevant material and otherwise admissible evidence (Map #1) of ownership is grave error. It was apparent at the outset of proceedings with the statement made by the prosecution (page 8 Trans.) "as to any issue of ownership of property, that's totally irrelevant to a charge of breach of peace. We're not worried in this instance about who owns what" that the omission of ownership to the jury served to give the impression that the legality of the entry by the Metropolitan District Commission, in concert with

the Connecticut Department of Transportation, was of no significance, because the petitioner defendant had no right to resist whether it was lawful or unlawful. Proof that the Metropolitan District Commission entered the property of the defendant was an essential element of the State's case. The intervening by the State on behalf of the Metropolitan District Commission was done to confuse or leave an erroneous impression in the minds of the jurors. *United States v. Clark*, 475 F.2d 240, 248, 2nd Cir., 1973.

The trial court's failure to instruct the jury properly on license and privilege, 53a-181 had the effect of removing from the consideration of the jury the issue of unlawful entry. *State v. Gallagher*, 191 Conn. 433 at 455. An unlawful entry under the circumstances was a seizure of property and the simple language of the 4th Amendment applies equally to seizures of persons and to seizures of property. *Payton v. New York*, 445 U.S. 573. See also *Lynch v. Household Finance Corp.*, 405 U.S. 538, 92 S. Ct. 1113.

Where the court would not permit any evidence into the record of defendant's ownership of the property by maps and deeds and timely exceptions were taken and where no evidence was presented or permitted into the record to justify entry upon private property, such illuminating errors warrant review by this court. A trial court's refusal to permit documents to be marked as exhibits for identification is "manifest error." *Duncan v. McTiernan*, 151 Conn. 469. In [Duncan] the court stated: "The court had no discretion to refuse such a request, because to allow such discretion would permit a trial judge to deprive an aggrieved party of a proper record for appeal." Accord, *Norwich Roman Catholic Diocesan Corp. v. Southern New England Contracting Co.*, 164 Conn. 472, 478, 325 A.2d 274; *Drazen Lumber v. Casner*, 156 Conn. 401, 405-406, 242 A.2d 754. The proffered records in the instant case, not having been marked for identification,

are not a part of the record on this appeal and, therefore, not available for examination by this court to determine whether the trial court made a proper ruling in excluding them as full exhibits. *Sickmund v. Connecticut Co.*, 122 Conn. 375, 382, 189 A. 876; *Davis v. Greenstein*, 112 Conn. 530, 535, 153 A. 161; *Roberti v. Barberi*, 105 Conn. 539, 543, 136 A. 85. Under the circumstances, the trial court erred in refusing to mark the proffered records for identification, *Duncan v. McTiernan*, supra 470.

A claimed constitutional error, raised for the first time on appeal, will be examined, if at all, not to ascertain whether the ruling or instruction was undesirable, erroneous, or even universally condemned but rather whether when reviewed in the context of the entire trial it violated some right guaranteed to the defendant by the Fourteenth Amendment to the Constitution of the United States; *Cupp v. Naughton*, 414 U.S. 141, 94 S. Ct. 396, 38 L.Ed.2d 369 (1973); or Article First § 8 of the Constitution of Connecticut. *State v. Kurvin*, 186 Conn. 555 at 565.

CONCLUSION

Plaintiff has alleged that as owner he had a constitutional license and privilege to resist the illegal, unlawful and uncompensated entry by the Metropolitan District Commission, in concert with the Connecticut Department of Transportation, upon private property without acquiring a right-of-way or its equivalent.

For the foregoing reasons and upon the foregoing authorities, the trial court ruling should be reversed and set aside and the Writ of Certiorari granted.

Respectfully submitted,
 AUGUSTUS J. SIMMONS
 Petitioner



APPENDIX

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APPENDIX A

APPELLATE COURT DECISION

13 Conn. App. 804

STATE OF CONNECTICUT v. AUGUSTUS SIMMONS
(5578)

Daly, Norcott and Foti, Js.

Argued December 8—decision released December 29, 1987

Information charging the defendant with the crime of breach of the peace, brought to the Superior Court in the judicial district of Hartford-New Britain, geographical area number thirteen, and tried to the jury before *Hale, J.*; verdict and judgment of guilty, from which the defendant appealed to this court. *No error.*

Augustus J. Simmons, pro se, the appellant (defendant).

Geoffrey Marion, deputy assistant state's attorney, with whom, on the brief, was *James G. Clark*, assistant state's attorney, for the appellee (state).

PER CURIAM. After a plenary examination of the record, transcripts and briefs filed in this matter, and after having afforded those claims of error, which are properly before this court, the appropriate scope of review, we conclude that there is no merit to the defendant's averments of error.

There is no error.

APPENDIX B

SUPREME COURT DECISION

SUPREME COURT
STATE OF CONNECTICUT
NO. PSC-87-1075
STATE OF CONNECTICUT

v.

AUGUSTUS J. SIMMONS

ORDER ON PETITION FOR
CERTIFICATION TO APPEAL

On consideration of the petition by the defendant for certification to appeal from the Appellate Court (*12 Conn. App. 804) it is hereby ordered that said petition be, and the same hereby is denied.

BY THE COURT,
CYNTHIA M. GWOREK
Assistant Clerk-Appellate

Dated: February 2, 1988

Notice to: 2/2/88

Clerk, Superior Court, Hartford at GA 13—60657

Clerk, Appellate Court

Augustus J. Simmons, pro se

James G. Clark, A.S.A.

Geoffrey Marion, S.A.S.A.

*Court error.

APPENDIX C

CONN. GEN. STATUTE 53a-181

§ 53a-181. *Breach of peace: Class B misdemeanor*

(a) A person is guilty of breach of the peace when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he: (1) Engages in fighting or in violent, tumultuous or threatening behavior in a public place; or (2) assaults or strikes another; or (3) threatens to commit any crime against another person or his property; or (4) publicly exhibits, distributes, posts up or advertises any offensive, indecent or abusive matter concerning any person; or (5) in a public place, uses abusive or obscene language or makes an obscene gesture; or (6) creates a public, hazardous or physically offensive condition by any act which he is not licensed or privileged to do.

(b) Breach of peace is a class B misdemeanor.

(1969, P.A. 828, § 183, eff. Oct. 1, 1971.)

APPENDIX D

CONN. CONSTITUTION, SEC. 8

(Rights of accused in criminal prosecutions. What cases bailable. Speedy trial. Due process. Excessive bail or fines. Presentment of grand jury, when necessary.)

SEC. 8. In all criminal prosecutions, the accused shall have a right to be heard by himself and by counsel; to be informed of the nature and cause of the accusation; to be confronted by the witnesses against him; to have compulsory process to obtain witnesses in his behalf; to be released on bail upon sufficient security, except in capital offenses, where the proof is evident or the presumption great; and in all prosecutions by indictment or information, to a speedy, public trial by an impartial jury. No person shall be compelled to give evidence against himself, nor be deprived of life, liberty or property without due process of law, nor shall excessive bail be required nor excessive fines imposed. No person shall be held to answer for any crime, punishable by death or life imprisonment, unless on a presentment or an indictment of a grand jury, except in the armed forces, or in the militia when in actual service in time of war or public danger.

APPENDIX E

CONN. CONSTITUTION, SEC. 11

(Right of private property.)

SEC. 11. The property of no person shall be taken for public use, without just compensation therefor.

APPENDIX F**AMENDMENT V,
CONSTITUTION OF THE UNITED STATES**

" . . . nor shall private property be taken for public use, without just compensation."

APPENDIX G**AMENDMENT XIV,
CONSTITUTION OF THE UNITED STATES**

" . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."